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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1946.

Nos. 272-273

MILNER HOTELS, INC., Owner and Operator of Tyler Hotel, - - - - Petitioner,

vs.

PAUL A. PORTER, Price Administrator, Office of Price Administration, for and on Behalf of the United States of America, Respondent.

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101 EAST FIRST STREET INCORPORATED, Owner and Operator of Milner Hotel, - - - - - - - Petitioner,

vs.

PAUL A. PORTER, Price Administrator, Office of Price Administration, for and on Behalf of the United States of America, Respondent.

PETITION FOR WRITS OF CERTIORARI

TO THE

United States Circuit Court of Appeals for the Sixth Circuit.

R. LEE BLACKWELL,
WM. MARSHALL BULLITT,
Counsel for Petitioners.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

July 2, 1946.

SOLICITOR GENERAL OF THE UNITED STATES,
Department of Justice,
Washington, D. C.

Sir:

In accordance with the Rules of the Supreme Court of the United States [Rule 38, §3], you are hereby notified that a petition for Writs of *Certiorari*, in the causes entitled upon the cover hereof, was filed with the Clerk of the Supreme Court of the United States on July 5, 1946. Printed copies of the Petition [there was no supporting Brief] and of the Records are hereby served upon you as Solicitor General, because the respondent is an officer or agency of the United States.

R. LEE BLACKWELL,
WM. MARSHALL BULLITT,
Counsel for Petitioners.

Service of the above notice, and of a copy of the Petition [there being no supporting Brief] and printed Records are hereby acknowledged this _____ day of July, 1946.

_____
Solicitor General of the United States.

[References, if required, under Rules 12, 27 and 38]

OPINIONS BELOW: *Bowles* v. *Milner Hotels*, 62 F. Sup. 493 (R. 10-14); *Milner Hotels* v. *Porter, Administrator, O. P. A.*, 154 F. 2d 1620 (R. 23).

JURISDICTIONAL AUTHORITY: Judicial Code §240(a) as amended by Act of February 13, 1925. These were civil cases in a Circuit Court of Appeals, and after judgments by the C. C. A. (6th) (*Id.*).

DATE OF JUDGMENT: District Court, October 11, 1945 (R. 14); C. C. A., April 8, 1946 (R. 23).

IN THE

Supreme Court of the United States

October Term, 1945

Nos. _____

MILNER HOTELS, INC., - - - *Petitioner,*

v.

PAUL A. PORTER, PRICE ADMINISTRATOR, O.P.A., - - - - - - *Respondent.*

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101 EAST FIRST STREET, INCORPORATED, - *Petitioner,*

v.

PAUL A. PORTER, PRICE ADMINISTRATOR, O.P.A., - - - - - - *Respondent.*

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The petitioners, two Milner Hotels,[1] petition for *Certiorari* to review *Bowles* v. *Milner Hotels,* 62 F.

[1] One is called the Milner Hotel; and the other is called the Tyler Hotel.

Sup. 493; 154 F. 2d 1620 [C.C.A., 6th], because it decided an important question of Federal law, which has not been, but should be, settled by this Court, **as there is no other decision on the subject in any other State or Federal court.**

Short Statement of the Matter Involved.

In violation of an O.P.A. regulation,[2] two Milner Hotels innocently[3] *overcharged* during a four months period, (*a*) 20 separate guests from 50c to $2.00 apiece —aggregating $13.50 (R. 4-5, 9); and (*b*) 54 separate guests from 50c to $1.50 apiece—aggregating $31.50 (R. 4-5, 9).

The District Court rendered (R. 10-14), and the C.C.A. (6th) affirmed (R. 23), the two judgments as follows:

> *First:* Against Milner Hotel for $500, being $25 per violation on account of each of the 20 guests (R. 14); and
>
> *Second:* Against Tyler Hotel for $1350, being $25 per violation on account of each of the 54 guests (R. 14).

These penalties aggregated $1850, on account of only $45 *unintentional* aggregate overcharges against 74

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[2] Emergency Price Control Act of 1942 (56 Stat. at p. 34) as amended by the Stabilization Extension Act of 1944 (58 Stat. 632, at §108(b), p. 640-641); Rent Regulation for Hotels and Rooming Houses, issued by O. P. A. in accordance with such Act as amended (R. 2).

[3] The violations were expressly stipulated to be "neither willful nor the result of failure to take practicable precautions against the occurrence of the violation" (R. 9; 58 Stat. Ch. 325, §108(b), p. 641)

guests (R. 14). No part of the $1850 goes to any guest; but it all goes to the U. S. Treasury.

The Question Presented.

Does the statute[4] authorize O.P.A. to recover $1850 statutory penalties against two Hotels [$1350 against one, and $500 against the other] because the Hotels *innocently* ([3] *supra*) overcharged 74 guests an aggregate of only $45 overcharges—despite the fact that both Hotels took all practicable precautions against the occurrence of any violation whatever (R. 9).

Both the District Court, and the C.C.A., held that (in a single separate action against each Hotel) O.P.A. should recover [on account of the several violations, each amounting to *less* than $25] *cumulative penalties*, as follows:

(1) A $25 penalty on account of *each* of the 20 guests overcharged by the Milner Hotel; and

(2) A $25 penalty on account of *each* of the 54 guests overcharged by the Tyler Hotel.

The Hotels contend that in a single action against a hotel for overcharges, the O.P.A. can only recover (1) the aggregate *innocent* overcharges set out in the action; or (2) a $25 penalty (whichever is the greater); and that O.P.A. cannot *accumulate* a number of innocent overcharges against separate guests, and then

[4] Emergency Price Control Act of 1942, §205(e), [56 Stat. 23, 34], as amended by the Stabilization Extension Act of 1944, §108(b), [58 Stat. 632, 640-641]. See Appendix, p. 7, *infra*.

recover a $25 penalty with respect to *each* guest in a *cumulative* manner.

REASON RELIED ON FOR THE ALLOWANCE OF THE WRITS.

An important question of Federal law is involved, which has never been considered or decided (1) by any other State or Federal court, nor (2) by this Court; and (3) should now be considered and settled by this Court.

First: The question arises exclusively under the O.P.A. "Emergency Price Control Act of 1942"[5] as amended by the "Stabilization Extension Act of 1944"[6] and thus applies to every seller and buyer of almost every commodity, and especially to rents, including hotel rooms and accommodations.[7]

O.P.A. has a one-year period to sue for penalties (58 Stat. at p. 641); and thus the Act will apply for a year *in the future,* as well as a year *in the past,* affecting vast numbers of persons throughout the entire United States.

The recent expiration of the O.P.A. leaves many questions open as to penalties.

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[5] 56 Stat. 23 at §205(e), p. 34.

[6] 58 Stat. 632 at §108(b), p. 640-641.

[7] 58 Stat. §108(a) at p. 640-641; R. 2; See "Rent Regulation for Hotels and Rooming Houses" issued May 31, 1943, effective June 1, 1943, 8 F. R. 7334. Code of Federal Regulations, Title 32, National Defense, Ch. 11—Office of Price Administration—Part 1388.1231, Defense Rental Areas. C.C.H. War Law Service, Price Control Cases, p. 49.301, par. 49.151, *et seq.*, for Defense Rental Areas, Louisville, Ky. See Schedule A, C. C. H. *Id.*, p. 49.334 (R. 4).

This Court should give a definite construction to the penalty section for the guidance of all courts, State and Federal, in respect of past violations, and prospective penalties therefor.

Second: An injured buyer, or guest in a hotel, cannot recover cumulative penalties for successive overcharges;[8] and yet the courts below held that O.P.A. must be placed in a *more favorable position* than the injured party, and should recover *cumulative* penalties (District Court, R. 13; C.C.A., R. 23).

Third: An illustration shows that the question here involved is "an important question of Federal law" [Rule 38—5(b)], on account of its widespread application to millions of persons, and the oppressive results of the lower court's ruling:

A long-established Louisville drug store has ten retail branches. Its ceiling price for chocolate bars is 8c each. Suppose it sells 10,000 bars [1,000 bars in each branch] to 10,000 separate buyer-customers. Despite taking every practicable precaution to prevent a violation (as concededly the Hotels did in the cases at bar) the drug store innocently sold chocolate bars at 10c each. This represented an aggregate overcharge of only $200—2c per bar on 10,000 bars, spread among 10,000 customers. O.P.A. contends, and C.C.A. held, that O.P.A. could recover from the Drug Store (on account of its $200 innocent overcharges)

[8] District Court, R. 12; C. C. A., R. 23; so conceded in O. P. A.'s Brief in C. C. A. at p. 6-7.

$25 *per customer*, or a quarter of a million ($250,000) dollars penalties![9]

This Court should say whether Congress meant that result.

R. LEE BLACKWELL,
WM. MARSHALL BULLITT,
Counsel for Petitioners.

July 2, 1946.

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[9] The illustration is not extreme. See *Hecht Co.* v. *Bowles*, 321 U. S. 321, at p. 324-325. This Court noted that the *Hecht Company*, in only 6 of its 170 departments, actually committed 3700 "innocent" violations during a six months' period.

APPENDIX.

§205(e) [which is the pertinent provision] of the Emergency Price Control Act of 1942 [56 Stat., p. 33-34] as amended by the Stabilization Extension Act of 1944 [58 Stat., p. 640-641] is as follows:

§205(e). If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action *on behalf of the United States* within such one-

year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.